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In the Supreme Court of the United States

OCTOBER TERM, 1974

ALAMO LAND AND CATTLE CO., INC., PETITIONER

v.

THE STATE OF ARIZONA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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This memorandum is submitted in response to the Court's order of October 29, 1974, inviting the Solicitor General to express the views of the United States in this case.

QUESTION PRESENTED

Whether the New Mexico-Arizona Enabling Act empowers the States of Arizona and New Mexico to lease school trust lands in such a manner that the lessee may become constitutionally entitled to just compensation for the value of its unexpired leasehold interest upon condemnation of the lands by the United States.

STATEMENT

Under Sections 24 and 28 of the New Mexico-Arizona Enabling Act, 36 Stat. 557, the State of Arizona holds certain lands in trust for the support of common schools.[1] Section 28 of the Act authorizes the State to lease those lands "to the highest and best bidder at a public auction" for not less than their appraised "true [rental] value" (Pet. App. B, pp. A-10, A-11).[2] Acting pursuant to this statutory authorization, the State leased certain of its school trust lands to petitioner for grazing purposes for a term of ten years. This case arises out of the condemnation of those lands by the United States during the term of petitioner's lease.

Petitioner, the State, and the United States jointly stipulated, at the time of condemnation, that the value of the condemned lands, including all improvements thereon, was $118,620. The United States then paid that amount into the United States District Court for the District of Arizona for distribution. After a hearing, the district court awarded $57,970 to the State for its fee interest and $60,650 to petitioner ($57,050 for its leasehold interest and $3,600 for the value of its improvements) (Pet. App. A, pp. A-2 to A-3).

The State appealed from the award of compensation for petitioner's leasehold interest.[3] The court of appeals reversed (Pet. App. A, pp. A-1 to A-6). Relying upon this

[1]"[T]he United States has a continuing interest in the administration of both the lands and the funds which derive from them." *Lassen* v. *Arizona Highway Dept.*, 385 U.S. 458, 460.

[2]Sections 24 and 28 of the Act, as amended, are set forth at Pet. App. B, pp. A-8 to A-13.

[3]The State concedes that petitioner is entitled to compensation for the value of its improvements (Pet. App. A, p. A-2).

Court's statement in *Lassen* v. *Arizona Highway Dept., supra,* 385 U.S. at 466, that "[t]he Enabling Act unequivocally demands * * * that the trust receive the full value of any lands transferred from it * * *," the court of appeals held that under the Act the State was entitled to compensation for the full value of the condemned lands, unreduced by the value of any unexpired leasehold interest. So reading the Act, the court concluded that the State had no power to create leasehold interests that would be compensable upon condemnation.

DISCUSSION

1. Under the Fifth Amendment, the holder of an unexpired leasehold interest in land is entitled to just compensation for the value of that interest upon condemnation of the land. *United States* v. *Petty Motor Co.*, 327 U.S. 372. A statute might, however, impose such restrictions upon the scope of leasehold interests created thereunder as to deprive such interests of any compensable value. But we do not believe that the New Mexico-Arizona Enabling Act has that effect.

A leasehold interest has compensable value when the capitalized fair rental value for the term of the lease exceeds the capitalized value of the lease rentals.[4] Stated in other terms, compensable value "is the value of the use and occupancy of the leasehold for the remainder of the tenant's term, plus the value of the right to renew* * *, less the agreed rent which the tenant would pay for such use and occupancy." *United States* v. *Petty Motor Co., supra,* 327 U.S. at 381. To bar a leasehold interest from

[4]For clarity of analysis, we here pretermit the additional consideration of possible renewals at less than fair rental value. But see *Almota Farmers Elevator & Whse. Co.* v. *United States,* 409 U.S. 470.

having compensable value, the statute under which it was granted would have to prevent such a disparity between lease rentals and fair rental value from arising.[5]

A disparity between the lease rentals and fair rental value could arise either because the lease rentals were initially set at less than fair rental value, or because during the term of the lease the value of the land (and consequently its fair rental value) increased without a commensurate increase in the lease rentals. The Enabling Act does protect against the initial setting of lease rentals at less than fair rental value: Section 28 (para. 4) prohibits the leasing of school trust lands for less than their "true [rental] value," and this prohibition is enforced by the stipulation (*id.* at para. 9) that "[e]very sale, lease, conveyance, or contract of or concerning any of the [school trust] lands * * * not made in substantial conformity with the provisions of this Act shall be null and void * * *" (Pet. App. B, pp. A-11, A-13). Thus any lease of school trust land under the Act that prescribes a rental of less than the land's fair rental value as of the beginning of the lease term (as determined by the appraisal required by the Act) is null and void, and the holder of such a leasehold interest therefore would not be entitled to compensation upon condemnation.

On the other hand, nothing in the Act requires adjustment of lease rentals in the event of an increase in the fair rental value of the land during the term of the lease. Accordingly, such an increase in fair rental value would confer

[5]Alternatively, the statute arguably could provide that all leases granted thereunder were revocable at will by the State (cf. *United States* v. *Fuller*, 409 U.S. 488) or, more directly, that upon condemnation no compensation would be payable to the lessee. But the Enabling Act contains no such provisions.

compensable value upon a valid leasehold interest. We therefore believe that the court of appeals erred in holding that the Act, by its terms, bars the State from leasing school trust lands in any manner that might result in the lessee becoming constitutionally entitled to just compensation for the value of its unexpired leasehold interest.

This Court did say in *Lassen* v. *Arizona Highway Dept.*, *supra*, 385 U.S. at 468, that the Act demands that the school trust receive the full value of any *lands* transferred from it. But the Court was not there addressing a situation in which a third party held the possessory interest in the land at the time of condemnation. We believe that the substance of the Court's statement in *Lassen* is simply that the trust must receive the full value of any *interests* transferred from it. Our position here is in harmony with that reading of *Lassen*: the State, acting in its capacity as trustee, must receive the full value (fair rental value as of the beginning of the lease term) of the possessory interest transferred by lease, and upon condemnation also must receive the full value of its reversionary interest. But it is not additionally entitled to receive the compensable value of the leasehold interest.[6] Cf. *State of Nebraska* v. *United States*, 164 F.2d 866 (C.A. 8), certiorari denied, 334 U.S. 815.[7]

[6]A contrary implication from *Lassen* is possible. The Court there held that the Act requires the State to pay the full monetary value of trust lands taken for highway construction, without any offset for resulting enhancement in the value of adjacent trust lands. The Court thus apparently viewed the Act as at least partially protecting the trust against unfavorable applications of normal just compensation principles. Cf. *Bauman* v. *Ross*, 167 U.S. 548, 584. But we see nothing in the statutory language that renders the just compensation clause wholly inapplicable to the leasehold interests created thereunder.

[7]Petitioner errs in asserting (*e.g.*, Pet. 7) that the holding below *directly* conflicts with *State of Nebraska* v. *United States*, *supra*. The two cases turned upon different statutes. But the actual differences between the school trust provisions of the Nebraska Enabling Act and those of the New Mexico-Arizona Enabling Act are insubstantial. Thus it can fairly be said that the two decisions represent a conflict in approach to the question of statutory interpretation presented here.

2. This is not to say that petitioner is entitled to compensation in this case. That depends on whether the rentals under petitioner's lease are less than the appraised rental value as of the beginning of the lease term or whether the land subject to the lease was appraised as required by the Act. If the lease was not "made in substantial conformity with the provisions of [the] Act", it is null and void and petitioner is not entitled to compensation. Moreover, even if petitioner's lease is valid under the Act, state law or the provisions of the lease may bar creation of compensable value (see Pet. App. A, pp. A-3 to A-4; cf. note 5, *supra*). The court of appeals did not pass on those questions, and we express no opinion on them here.[8]

3. The question presented here is of continuing importance in the States of Arizona and New Mexico. There are now pending in the United States District Court for the District of New Mexico cases involving the condemnation of more than 300,000 acres of school trust lands; the distribution of condemnation proceeds as between the lessees and the State of New Mexico, as trustee, awaits the disposition of this case. Moreover, several other western states are subject to similar enabling legislation (cf. *State of Nebraska* v. *United States, supra*), and the decision in this case will guide the distribution of condemnation proceeds in those jurisdictions as well.

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[8]Petitioner further contends that the State would not in any event be entitled to compensation for the value accruing to the land as a result of its proximity to facilities on petitioner's nearby land (Pet. 11-12). Our analysis of petitioner's principal contention covers this contention as well: value inherent in the land at the beginning of the lease term, because of its proximity to existing irrigation or other useful facilities, belongs to the State as trustee; but, assuming the validity of the lease and the absence of any contrary provisions in the lease or in state law, value added to the land during the term of the lease as a result, *inter alia*, of the lessee's construction of nearby facilities properly belongs at least in part to the lessee.

CONCLUSION

For the foregoing reasons, we believe that the States of New Mexico and Arizona are empowered by the New Mexico-Arizona Enabling Act to lease school trust lands in such a manner that, upon condemnation, the lessee may become constitutionally entitled to just compensation for the value of its unexpired leasehold interest. This question is of continuing importance to those States and to persons holding leasehold interests in school trust lands therein.

Respectfully submitted.

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